

OFFICE OF SPILL PREVENTION AND RESPONSE
NOTICE OF PROPOSED RULEMAKING

Notice is hereby given that the Office of Spill Prevention and Response (OSPR) within the Department of Fish and Game, proposes to amend Section 791.7, form FG OSPR-1972, and Sections 870.15 through 870.21 in Subdivision 4, Title 14 of the California Code of Regulations (CCR). These sections and the form pertain to Certificates of Financial Responsibility and the Oil Spill Prevention and Administration Fund Fee.

PUBLIC HEARINGS

Public hearings have been scheduled at which any interested party may present statements, orally or in writing, about this proposed regulatory action. The hearings will continue until all testimony is completed, and will be held as follows:

NORTHERN CALIFORNIA
Tuesday, April 15, 2003
Bay Model Visitors Center
2100 Bridgeway
Sausalito, California
10am

SOUTHERN CALIFORNIA
Thursday, April 17, 2003
Port of Long Beach Administration Building
925 Harbor Plaza, 6th Floor Board Room
Long Beach, California
10am

Pre-hearing registration will be conducted just prior to each hearing. Those registered will be heard in the order of their registration. Anyone else wishing to speak at the hearings will be afforded such opportunity after those registered have been heard. The time allowed for each person to present oral testimony may be limited if a substantial number of people wish to speak.

Individuals presenting oral testimony are requested, but not required, to submit a written copy of their statements. The hearings will be adjourned immediately following the completion of the oral testimony.

SUBMISSION OF WRITTEN COMMENTS

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to OSPR. All written comments must be received by OSPR at this office no later than 5:00 p.m. on April 17, 2003, in order to be considered. Written comments may be submitted by mail, fax, or e-mail, as follows:

Department of Fish and Game
Office of Spill Prevention and Response
P.O. Box 944209
Sacramento, California 94244-2090
Attention: Joy D. Lavin-Jones
Fax: (916) 324-5662
E-mail: jlavinj@ospr.dfg.ca.gov

PERMANENT ADOPTION OF REGULATIONS

OSPR may thereafter adopt the proposal substantially as described in this Notice, or may modify such proposal if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposals - with changes clearly indicated - will be available for 15 days prior to its adoption from the person designated in this Notice as contact person. The text will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

AUTHORITY AND REFERENCE

Government Code Section 8670.39(b) grants the Administrator the authority to adopt regulations to implement Article 6, which establishes the Oil Spill Prevention and Administration Fund. Government Code Section 8670.37.54(b) grants the Administrator the authority to adopt regulations governing policy or other contractual terms, conditions or defenses which are necessary or which are unacceptable in establishing evidence of financial responsibility. As amended by SB 849 (Chapter 514, Statutes of 2002): Government Code Section 8670.40(a) raises the maximum fee that can be charged by OSPR on each barrel of oil and petroleum products entering California over or through State marine waters by 1 cent per barrel, from 4 cents to 5 cents; Government Code Section 8670.41(a) authorizes the Administrator to charge up to \$2,500, to be collected with each nontank vessel Certificate of Financial Responsibility application, and; Government Code Section 8670.41(b) allows for a reduced fee for nontank vessels which pose a reduced risk of pollution. Therefore, these regulations implement, interpret, and make specific Government Code Sections 8670.37.54, 8670.39, 8670.40, and 8670.41.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The Lempert-Keene-Seastrand Oil Spill Prevention and Response Act (Act, see Government Code Sections 8574.1 through 8670.72, and Public Resources Code Sections 8750 through 8760) created a comprehensive state oil spill program for marine waters. The law expanded the authority, responsibilities and duties of the Department of Fish and Game under the direction of the Administrator of the Office of Spill Prevention and Response (OSPR). Government Code Section 8670.6 provides authority for the establishment of the OSPR which contains staff to assist the Administrator in performing the duties specified in the Act.

Under existing law the Administrator is authorized to collect a fee sufficient to carry out the purposes of the Act. The fee, initially established in statute at up to 4¢ per barrel, is applied to oil and petroleum products entering the State through, across or in State marine waters.

SB 849 (Chapter 514, Statutes of 2002) authorized a 1¢ increase to the maximum fee that can be charged by OSPR on each barrel of oil and petroleum products entering California over or through State marine waters. The one-penny per barrel increase will help OSPR solidify and move forward with administrative programs which had been negatively impacted by previous budget adjustments.

As SB 849 provides in Government Code Section 8670.40(a): “The State Board of Equalization shall collect a fee in an amount determined by the Administrator to be sufficient to carry out the purposes set forth in Subdivision (e), and a reasonable reserve for contingencies. The annual assessment may not exceed five cents (\$0.05) per barrel of crude oil or petroleum products.” The Administrator has determined that the five cents (\$0.05) per barrel assessment is necessary to carry out the purposes set forth in the Lempert-Keene-Seastrand Oil Spill Prevention and Response Act. Setting the fee at five cents (\$0.05) per barrel will also provide for a reasonable reserve for possible contingencies.

Government Code Section 8670.41, as provided in SB 849, states: “The Administrator shall charge a nontank vessel owner or operator a reasonable fee, to be collected with each application to obtain a certificate of financial responsibility, in an amount that is based upon the Administrator’s costs in implementing this chapter relating to nontank vessels. Before January 1, 2005, the fee shall be ...\$2,500, or less”. The legislation also allows the fee to be reduced for nontank vessels which pose a reduced risk of pollution. The proposed regulations contain such a provision, based on the oil carrying capacity of the nontank vessel.

In summary, this regulatory action is necessary to:

1. Implement a 1¢ increase, from 4 cents to 5 cents, to the maximum fee that can be charged by OSPR on each barrel of oil and petroleum products entering California over or through State marine waters.
2. Implement a \$2,500 fee to be paid by nontank vessel owner/operators every two years, to coincide with their COFR application submittal.
3. Develop reduced fees for “smaller” nontank vessels as described.
4. Make corresponding changes to the COFR Application for Nontank Vessels (FG OSPR-1972(1/03)).

Amendments have already been implemented through an emergency rulemaking (OAL File # 02-1113-01 ER) that went into effect on January 1, 2003 (the effective date of the enabling legislation) to increase funding to enable OSPR to carry out currently unfunded mandates, enhance OSPR’s very successful unannounced drill program and provide for a prudent reserve for the Oil Spill Prevention and Administration Fund. This rulemaking is a follow-up to that emergency action.

SMALL BUSINESS IMPACT STATEMENT

OSPR has determined that the proposed regulations may affect small businesses.

COMPLIANCE WITH GOVERNMENT CODE SECTIONS 8574.10 AND 8670.54

In accordance with Government Code Section 8574.10, these regulations have been submitted to the Review Subcommittee of the State Interagency Oil Spill Committee for review and comment; and in accordance with Government Code Section 8670.54, these regulations have been submitted to the Oil Spill Technical Advisory Committee for review and comment.

DISCLOSURES REGARDING THE PROPOSED ACTION

Mandate on local agencies and school districts: NONE.

Costs or savings to any state agency: NONE.

Costs or savings to local agencies or school districts which must be reimbursed in accordance with Part 7 (commencing with Section 17500) of Division 4 of the Government Code: NONE.

Other non-discretionary costs or savings imposed upon local agencies: NONE.

Costs or savings in federal funding to the state: NONE.

Cost impacts on representative private persons or businesses:

The economic impact to the consumer will likely be negligible. According to figures published by the California Energy Commission, crude oil price fluctuations cause a change of about 2.5¢ per gallon in the crude cost for gasoline for every \$1.00 per barrel change in crude oil cost. Given the Energy Commission numbers, imposition of the 1¢ per barrel increase would arguably only have a \$0.0005 impact on the price of a gallon of gas. Even if 100% of the fee was passed on to the consumer, they would pay an extra penny for every 20 gallons of gasoline purchased. This would obviously not have a discernable effect on the per gallon price of gasoline for the consumer. Similarly, the biennial nontank vessel fee of either \$2,500, \$1,500 or \$500, depending on the oil carrying capacity of the nontank vessel, would have a minimal impact on the affected nontank vessel industry.

Significant effect on housing costs: NONE.

BUSINESS IMPACTS

The OSPR has made an initial determination that the proposed amendments will not have a significant statewide adverse economic impact directly affecting California businesses, including the ability of California businesses to compete with businesses in other states.

ASSESSMENT OF JOB/BUSINESS CREATION OR ELIMINATION

The OSPR has determined that this regulatory proposal will not have a significant impact on the creation or elimination of jobs in the State of California, and will not result in the elimination of existing businesses nor create or expand businesses in the State of California.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code Section 11346.5(a)(13), OSPR must determine that no reasonable alternative that has been considered or that has otherwise been identified and brought to the attention of OSPR would be more effective in carrying out the purpose for which this action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

AVAILABILITY OF DOCUMENTS AND OSPR CONTACT PERSON

OSPR has prepared an Initial Statement of Reasons for the proposed regulatory action and has available all the information upon which the proposal is based. Copies of the exact language of the proposed regulations, Initial Statement of Reasons, forms, the rulemaking file, the Final Statement of Reasons (when available) and other information, if any, may be obtained upon request from:

Department of Fish and Game
Office of Spill Prevention and Response
P.O. Box 944209
Sacramento, California 94244-2090

In addition, the Notice, the exact language of the proposed regulations, and the Initial Statement of Reasons may be found on the World Wide Web at the following address:

<http://www.dfg.ca.gov/Ospr/regulation/regulation.html>

Questions regarding the proposed regulations, requests for documents, or any questions concerning the substance this regulatory action may be directed to Joy Lavin-Jones ((916) 327-0910), or Bud Leland ((916) 323-4649), at the above address.